OGC HAS REVIEWED.

As a result of various problems which have developed in the period since July 10, 1947, the date on which the Interdepartmental Federal Tort Claims Committee last met, a meeting of said Committee was called for May 4, 1951. Notices of intention to hold said meeting were sent to each agency of the Government which in 1947 had expressed interest in, and to all agencies in any way concerned with, the administration of the Federal Tort Claims Act.

This report represents a summary of all action taken by the Interdepartmental Federal Tort Claims Committee, hereinafter referred to as the "Committee."

Meetings of the Committee were held on May 4, June 22, July 10, August 1, September 5, September 19 and November 26, 1951.

The following agencies of the Government were represented, and the persons named opposite the agency are those who at one time or another represented the agency indicated, at meetings of this Committee:

General Accounting Office	Mr. O. Knowles Blanchard
Department of the Army	Col. Irvin Schindler Maj. J. L. Haefele Lt. Col. T. Chapman Col. Clio E. Straight Col. Russell T. Boyle
Department of the Navy	Comdr. Albert L. O'Bannon
Public Housing Administration	Mr. Charles N. Malone Mr. Arnold I. Coplan Mr. Joseph Burstein
Post Office Department	Mr. Edwin C. Green Mr. Harold F. Jones
Department of Agriculture	Mr. Ralph F. Koebel Mr. E. F. Mynatt Miss G. J. Bingert Mr. Elmer Mostow
Federal Security Agency	Mr. Harold B. Siegel
Department of the Treasury	Miss Eileen C. O'Connor
Department of the Interior	Mr. Thomas C. Billig Mrs. Mima R. Pollitt
Veterans Administration	Mr. John H. Kerby

Department of State	Mr. Edward G. Misey
Reconstruction Finance Corporation	Mr. Sam Weinstein
General Services Administration	Mr. J. E. Moody Mr. A. D. Mileur
Department of the Air Force	Col. George Cechmanek Maj. Samuel C. Borzilleri Maj. Eugene N. Gant Lt. Col. J. F. Fowles Lt. Col. Dorothy S. Feddern Col. Fred Wade Maj. S. I. Gasiewicz
Department of Commerce	Mr. Francis B. Myers
Department of Justice	Mr. John J. Finn Mr. Robert T. Andrews Mr. Homer H. Henry Mr. L. E. McDonough

John J. Finn, Department of Justice, was appointed Chairman of the Committee, and Robert T. Andrews, Department of Justice, was named Secretary. Mr. George S. Vanderwende of the Bureau of the Budget appeared as an observer at the meetings of both the Committee and the Subcommittee on Forms.

Two subcommittees were appointed to carry out some of the work of the Committee. The problems considered, the work accomplished and the recommendations of said subcommittees will be included in the text of this report.

The administrative settlement of claims filed jointly by subrogors and subrogees was considered by the Committee. This subject has apparently caused considerable difficulty in the administrative disposition of claims filed under the Federal Tort Claims Act, specifically 28 U.S.C. 2672.

Problems have arisen under said Section of the Federal Tort Claims Act when claims are filed by insurance companies and by individual claimants both laying claim to the same cause of action. The question was mainly, whether or not, if a claim has been filed by a subrogor and a subrogee concerning the same accident and same damage, the agency could pay more than $1,000.00. The attention of the Committee was directed to the opinion of the Attorney General (Vol. 41, Op. No. 13), which held that

if the interests of the subrogor and subrogee are derived from a single claim, an administrative settlement exceeding $1,000.00 is unwarranted.

In this connection, it was noted that there appears to be no uniform practice with regard to filing of a subrogee's claim for administrative settlement; some agencies require the subrogor and subrogee to file separate claims, while others permit or require joinder.

The Post Office Department which has had substantial experience, and more than any other agency, with this type of claim prefers that separate claims be filed. It has been the practice of that Department to require the submission of separate claims by the insurer and the insured. When a claim is processed, sufficient copies are made of the "Findings" so that carbon copies may be used in settling any additional claim or claims. The advantages of separate claims are (1) delivery of the amount awarded may be made direct to the claimant without requiring the additional signature of anyone else, and (2) when the claimant and his insurer live in different cities, there is no delay or inconvenience experienced in effecting settlement. Another indirect advantage is that where the insured is paid direct, it often happens that a claim is not filed by the insurance company, and there is a corresponding saving to the Government.

In those instances where the combined claims of the insurer and the insured exceed the maximum amount allowable administratively so that there has to be a reduction of the claim in order to confer jurisdiction upon the Department, the claimant and his insurance company, or their attorney, as the case may be, are required to state in what proportions the amount allowable administratively shall be divided between them. Likewise, in cases where the Department concludes that a lesser amount than that claimed in the aggregate by insurer and the insured should be paid, they are so advised and required to state in what proportions the amount which the Department is prepared to allow shall be divided.

In view of the opinion of the Attorney General, the Committee

concluded that at least the primary problem involved was settled to the unanimous satisfaction of the members.

It has been the practice of the Post Office Department since the adoption of Standard Form 95 to require claimants to provide information regarding the insurance coverage on their cars. This information has been regarded by the Post Office as essential inasmuch as it has uniformly paid subrogation claims. The following format has been used by that Department to obtain the desired information.

INSTRUCTIONS REGARDING INSURANCE COVERAGE

Before a claim filed with the Government under the Federal Tort Claims Act may be adjudicated the information requested below must be furnished:

Do you carry collision insurance? _____
Yes or No

If yes, furnish name and address of insurance company and policy number.

_____

_____

Have you filed claim on your insurance carrier in this instance, and, if so, is it full coverage, or deductible?

_____

If deductible, state amount _____

If such claim has been filed, what action has your insurer taken, or what action does it propose to take with reference to your claim? (It is necessary that you ascertain these facts.)

_____

Do you carry public liability and property damage coverage? _____
Yes or No

If yes, furnish name of insurance carrier.

_____

_____

_____
Signature

It is the recommendation of the Committee that the administrative practice evolved by the Post Office Department (and by some others of a similar nature) be adopted as a standard operating procedure to be carried out by all agencies of the Government in connection with this type of claim.

It is the recommendation of the Committee that the form similar to that suggested above be incorporated in Form 95. That form, in the manner agreed upon by the Committee with other amendments which are suggested hereinafter, is the form which the Committee believes should now be presented and furnished agencies, and is attached to this report. (Exhibit A).

The Committee considered other revisions of Standard Form 95 felt to be necessary because of the new code on the Judiciary and Judicial Procedures, effective September 1, 1948, and the recent decision in the case of Corkle v. United States, 94 F. Supp. 908. (This decision has been construed as holding that 28 U.S.C. 2514 applies only to actions brought in the Court of Claims.)

Consideration of Form 95 in its entirety was had. It will be noted that on the form as it now reads there is a clause which advises those submitting a claim on said form that criminal and civil penalties may be invoked pursuant to 52 Stat. 197 (18 U.S.C. 80) and 36 Stat. 1141 (28 U.S.C. 279), respectively, if the claim is fraudulently represented. The decision in Corkle v. United States, supra, was discussed at great length.

It was finally concluded that, regardless of the views of various members of the Committee as to the accuracy of the Corkle opinion, it would be advisable to amend Form 95 in its citation of the criminal statute from its present citation so that it will in the future read "62 Stat. 698, 749 (18 U.S.C. 287, 1001" in order to reflect accurately the revision resulting from the 1948 recodification of Title 28. It is recommended this be done.

Further, and in view of said decision, reference to the civil statute providing for forfeiture of the entire claim should be deleted. In its place, it is the recommendation of the Committee that reference be made to the statute imposing civil sanctions for presenting fraudulent claims, R.S. §3490, 5438 (31 U.S.C. 231).

The Committee unanimously recommends that the present provisions in Standard Form 95, about which the objections noted have been raised, be deleted and that the following statements be inserted in lieu thereof:

CRIMINAL PENALTY FOR PRESENTING
FRAUDULENT CLAIM OR MAKING
FALSE STATEMENTS

Fine of not more than $10,000.00 or imprisonment for not more than 5 years, or both. (See 62 Stat. 698, 749; 18 U.S.C. 287, 1001.)

CIVIL PENALTY FOR PRESENTING
FRAUDULENT CLAIM

The claimant shall forfeit and pay to the United States the sum of $2,000, plus double the amount of damages sustained by the United States. (See R.S. §3490, 5438; 31 U.S.C. 231.)

It was the consensus of the majority that the Corkle decision pointed up the need for a general forfeiture statute which would be applicable to all claims filed, brought, etc., against the United States. In this connection, drafts of such a statute were drawn up, submitted to the Committee and discussed at great length.

The drafts initially submitted were as follows:

No. 1 - A Claim against the United States shall be forfeited to the United States by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof.

In such cases the court shall specifically find such fraud or attempt and render judgment of forfeiture which shall forever bar the claimant from prosecuting the claim.

> No. 2 - Whenever it shall appear to any court of the United States having jurisdiction of a suit involving a claim against the United States or against any officer, department, corporation or agency thereof in his or its official capacity that the person, firm or corporation having such claim against the United States or against any such officer, department, corporation or agency, practiced or attempted to practice any fraud against the United States or against such officer, department, corporation or agency in the proof, statement, establishment, or allowance of such claim, it shall be the duty of the court to declare such claim forfeited to the United States; and in such cases the court shall specifically find such fraud or attempt and render judgment of forfeiture.

It was uniformly agreed that these drafts were intended to cover overt-acts of fraud, such as the submission of a deliberately padded bill or manufactured evidence, rather than instances where the claim is simply swollen. In the course of the discussion it was apparent that the preference of the individual members of the Committee turned on the question whether forfeiture should be pronounced by the administrative agency or whether the penalty should be imposed by the court.

Those favoring administrative determinations expressed the view that where a claim was fraudulent, the agency should expressly state the reason for the denial of the claim. It was felt that by putting the claimant on notice that the agency was aware of the fraud, such notification in many instances would forestall appeals either to the courts or to the claimant's congressman. While it was admitted that the determination by the agency handling a claim is an ex parte proceeding, it was pointed out that the claimant nevertheless has the right to secure judicial review and that the claimant's rights are not automatically cut off.

Those opposing administrative forfeitures felt that a matter as serious as the declaration that a claim is forfeited should not be determined ex parte by administrative personnel. It was felt that, in the last analysis, after a claim is deemed to be fraudulent by an administrative agency, the agency has open to it the recourse of denying the claim without explanation. In the event that administrative forfeiture on the ground of fraud is authorized, certain of the agencies indicated

that it was their present intention to make no use of it.

With respect to Draft No. 1, it was pointed out that its language is borrowed from 28 U.S.C. 2514 and that the only difference between the two lies in the fact that the draft omits any reference to the Court of Claims. Inasmuch as 28 U.S.C. 2514 has been on the books for a great number of years, a majority of the members felt that Congress would accept the provisions of Draft No. 1 more readily than those set forth in Draft No. 2.

Those advocating the adoption of Draft No. 2 pointed out that it was more comprehensive in that its provisions would embrace not only suits against the United States but against the Collector of Internal Revenue and the Collector of Customs as well. However, it was noted that the clause providing for forfeiture of the claim "to the United States" might prove undesirable in cases arising under the War Claims Act of 1948, in that monies accruing to the United States in that instance are not deposited in the general account of the Treasury, but in a special War Claims Fund. Because of this objection, and because of other minor changes felt desirable, the proponents of Draft No. 2 submitted to the Committee a revised draft reading as follows:

> Whenever any court of the United States having jurisdiction of a suit involving a claim against the United States or against any officer, department, corporation or agency thereof in his or its official capacity, finds that the person, firm or corporation having such claim against the United States or against any such officer, department, corporation or agency, practiced or attempted to practice any fraud against the United States or against such officer, department, corporation or agency in the proof, statement, establishment, or allowance of such claim, the court shall declare such claim forfeited; and in such cases the court shall specifically find such fraud or attempt and render judgment of forfeiture.

While the Committee felt that the revision of Draft #2 overcame the objections heretofore raised, the Committee concluded after much deliveration that Draft #1 was more acceptable.

It is the recommendation of the Committee, in view of the need for such a statute, felt by some agencies that a statute such as Draft No. 1, indicated above, or a statute of substantially similar format, be sought by the Government from Congress.

Form 95, in the complete format the Committee recommends it henceforth assume, is attached hereto (Exhibit "A").

The Committee, upon undertaking a consideration of the various forms used in the administration of the Federal Tort Claims Act, appointed a Subcommittee to make a study of the forms and to submit whatever revisions it felt would eliminate the difficulties arising in connection with the forms currently in use. (Standard Forms 91 to 96, inclusive, 1145 and 1145A.) The Subcommittee consisted of: Col. Irvin Schindler (Army); Mr. Harold Jones (Post Office); Commander Albert O'Bannon (Navy); Mr. O. Knowles Blanchard (G.A.O.); Mr. Robert Andrews (Justice), Secretary; and Mr. John J. Finn (Justice), ex officio Chairman.

This Subcommittee, following the adoption of its proposed forms by the Committee, was directed to confer with representatives of the Federal Safety Council in an effort to reconcile their respective views in connection with the use of all standard Government forms. On June 28, 1951 the Federal Safety Council, through its representatives, Messrs. William Connolly, William Griffin and William G. Marx, was presented the views of the Committee on the changes it proposed in certain of the standard Government forms used in processing accident and claim reports. The representatives of the Federal Safety Council were unable at that time to present the Safety Council's official views but tentatively and unofficially stated that they could see no objection to the recommendations of the Committee.

Subsequently, the Chairman of the Committee, Mr. John J. Finn, appeared before a meeting of the Safety Council held in the Interdepartmental Auditorium on July 31, 1951, and outlined the position of the Committee with regard to the forms and explained generally the intention of the Committee and the reasons behind the proposed changes. Messrs.

Finn and Andrews repeated the explanations to a Subcommittee of the Safety Council on November 7, 1951 and urged the adoption of the forms proposed by the Committee, copies of which had been forwarded to the Safety Council during the course of these negotiations.

The Safety Council was to advise the Committee as to its position with respect to the proposed action, it being intended that these advices would be forwarded with the report of this Committee, but to date, the Committee has received no word from the Safety Council which would indicate the official action or views of the Council in connection with any of the matters discussed in this report.

The first of the forms to be considered in the course of these discussions was Standard Form 91 which is intended to be filled out by the operator of a Government vehicle when making his initial report of the accident. Standard Form 91, as it is presently constituted, contains over 130 questions (without counting the driver's narration of the accident) which are supposed to be answered at the scene of the accident. It is exceedingly impractical to require an operator to fill in answers to 130 questions at the site of an accident, particularly when it is considered that many accidents occur at night, during rain storms, snow storms, or adverse weather conditions generally. The Committee concluded that to require the operator to fill out a form of such an extensive nature at the scene of an accident, while under the emotional strain and nervous tension naturally experienced and generally present, is imposing on the operator an impossible task.

Moreover, a number of questions which are supposed to be answered at the scene of the accident could just as well be included in the supervisor's report, e.g., questions relating to the Federal operator's driving experience, his experience in this type of vehicle, etc. There does not seem to be any sound reason for requiring this type of information to be placed on the form at the scene of the accident.

The Subcommittee designated to prepare the revised forms found in the course of its study that the deficiencies of Form 91 are not confined to impracticality and lack of simplicity, but that the form is subject to a far greater fault, namely, that while it purports to be the operator's

account of the accident, in many instances it is filled out by the supervisor, either in its entirety, save for the signature, or in conjunction with the operator. It is equally obvious in many cases that Form 91, as finally concluded, is not completed at the scene of the accident, a fact which was privately admitted by the members of the Subcommittee of the Safety Council, but is actually executed in an office or garage, often after considerable time has elapsed. This leads to the conclusion that either the form as presently constituted is too complicated for the mentality of the average Government driver, or that there is a failure on the part of the driver's supervisor to see to it that the form is filled out in its entirety. Probably both factors contribute to the failure to execute the form properly. However, it is believed that no amount of administrative control can insure that this form, with its many questions, can be completed at the scene of an accident. In fact, the very nature of the form itself indicates that the form cannot be filled out at the scene of the accident inasmuch as the supervisor cannot be expected to be at the scene of the accident when it occurs or shortly thereafter. Further comment in this respect is made below.

The fact that the form is filled out or completed by some one other than the driver makes it, in part at least, hearsay, and, under ordinary circumstances, it would be inadmissible in evidence, but because the form purports to be the driver's own statement the courts have refused to uphold the Government's objections as to admissibility. The result is that there is introduced into the record not only the operator's own statement, but a conglomeration of material which supervisors and investigators may have gleaned from investigation and interrogation as well as opinion and conclusions of supervisors and investigators.

Moreover, even though the form is designated "Operator's Report of Accident" an examination of the various questions clearly points up the fact that some of them at least are not intended to elicit information from the operator, but rather are intended to secure information which can only be in the possession of the operator's supervisor. For example, Section 28 of the form is devoted to the comments of the reviewing official as to

whether the driver was acting within the scope of his employment, the question as to what was the cause of the accident and a request for information as to how the accident could have been prevented.

It can thus be seen that in a close case, the Judge being only human, cannot help but be influenced by the conclusions of the drivers' supervisors who, for a number of reasons, may not be qualified to judge the legal liability, and who make their determinations without regard to the legal consequences that may ensue. What has been particularly damaging to the Government's defense is that in certain instances these conclusions have been completely erroneous and out of consonance with the actual facts, for as experience has shown, the United States has successfully defended tort actions in which the driver's supervisor previously had concluded that the Government driver was responsible for the accident.

Even if these administrative determinations are eliminated from the form, serious objections to the form will still remain. There still remains the fact that because of the signature of the driver at the bottom of the form, a number of trial judges have compelled its production and allowed its introduction in evidence in the course of trials under the Federal Tort Claims Act. The reports thus introduced contain hearsay and other investigative data which have no real place on a form which purports to be an operator's report of an accident. The Government is under no duty to furnish opposing counsel with investigative reports, in fact, investigative material generally is not subject to production. But when investigative material is incorporated on a form, such as Standard Form 91, and signed by the operator involved, the United States Attorney is virtually helpless in his endeavors to block its production and introduction into evidence.

The fact that the court permits hearsay evidence to be admitted over the Government's objection is not, in itself, the real rub. The proposed changes in the form are not prompted solely by a desire to exclude hearsay evidence and conclusions of persons other than the driver from possible introduction in evidence, but because experience has shown that such objectionable material has been used to the great disadvantage of the Government. The "Operator's Report," as presently constituted, has been

used at trials to contradict and impeach the testimony of the Government driver, and should the witness endeavor to explain that the report, or a portion thereof, is, in reality, some other person's statement, he is confronted with the fact that he himself has signed the form. The dilemma this produces most certainly is disadvantageous to the Government, and it takes no great amount of imagination to comprehend the effect on a court of efforts to contradict or explain the Government's own form.

It should not be implied from the foregoing that the Committee is desirous in any way of covering up or suppressing evidence which is legally available to opposing counsel under the law, or of excusing or condoning the misconduct of operators of Government vehicles. Instead, the Committee seeks to insure that whatever information is introduced in evidence is only that which is legally competent.

The Committee concluded that because of the foregoing, and particularly since Form 91 does not fulfill the purpose for which it was intended anyway, it is imperative that a new simplified form be drawn up which would be limited to eliciting information within the knowledge of the driver and which only contains information for which the operator can be held responsible and which he can warrant and defend. It was pointed out at this juncture that as a practical matter, Government Attorneys, in defending Federal Tort Claims Act suits, would much prefer that no form be filled out by the Federal driver. Trial attorneys would much prefer to have in their possession (if a need is felt to perpetuate the testimony of the operator) either a signed statement taken by a trained investigator, or a deposition. It is realized, of course, that in the nature of things, in the conduct of the Government's business such a proposal or view might well be deemed to be as impractical as the Committee feels the present form is for the purpose it is intended to serve. Realizing that there must be some basic information available to administrators, and fully conscious that there should be made available to the Federal Safety Council certain basic information which can be supplied by the Government operator without assistance, the Committee prepared a form which eliminates all the objectionable features of the old form and which at the same time satisfies the essential requirements of the Federal Safety Council.

It should be noted that in connection with the accident reporting forms currently in use the Federal Safety Council advised the Committee that they could not understand the basis for the latter's objections, since the Committee in 1947 and 1948 had approved Standard Forms 91 and 92 before their promulgation. Upon investigation it was discovered that this assertion simply did not accord with the facts; that, in reality, these forms were developed by the Federal Safety Council while the Committee had confined its attention to the development of Standard Forms 93 to 96, the claim reporting forms. The members of the Committee who were serving at the time these forms were adopted not only disclaim any knowledge of the fact that the Committee had any part in the promulgation of Forms 91, 91A and 92, but assert that said forms were adopted over their objection. The fact that these forms are the product of the Federal Safety Council rather than of this Committee is supported by Bureau of the Budget Circular No. A-5, Revised (December 17, 1947).

In introducing Form 91 as revised, it is pointed out that if it is adopted the Government will not be embarrassed in the future should such a form be introduced in evidence upon demand of a plaintiff, and that such a form will far more accurately portray the operator's story of the happening of the accident, without embellishment, in his own language and not that of some supervisor, than has been the case in the past.

It should be noted that the Committee has made no recommendations with respect to Standard Forms 91A and 93 and that the Committee would interpose no objection to a revision of these forms by the Safety Council in the event that the latter chose to incorporate any or all the questions now appearing in Form 91, which would be deleted if the revised form were adopted. In short, it was pointed out that the Committee does not desire in any way, except as indicated, to effect a change in the forms used or felt desirable by the Council.

Standard Forms 91A and 93 have not been susceptible to introduction in evidence in litigation brought under the Federal Tort Claims Act. Since

these forms by their very nature indicate that the information contained therein is obtained by investigators and is merely hearsay, courts have ruled that it is not admissible or that the forms are not admissible in evidence.

In regard to Form 91A the Federal Safety Council advised that this form is used to copy information from Form 91, to add information thought desirable and necessary by supervisors, and to disseminate the information thus obtained amongst administrative offices and for the use of the Council.

It is important to note here that Form 91, being of cardboard composition, usually remains in the files of the agency unless it is needed in the adjudication of tort claims. Once filed it is no longer used by the Safety Council as the latter thereafter uses Form 91A. This fact somewhat weakens any argument which is advanced that Form 91 must remain in its present format in order that the Safety Council is to obtain its desired information.

It is believed that Form 91A can be so devised that it can continue to adduce all the information desired; or, it may be possible to design a paper copy of Form 91 which would contain a detachable format of 91A which could be used for Safety Council purposes. By thus incorporating all these forms (except for the part of Form 91 executed by the driver on cardboard) a substantial saving of time, effort and money can ultimately be effected.

Standard Forms 91A and 93 were considered by the Subcommittee and

by the Committee. It was the recommendation of the Subcommittee, concurred in by the Committee, that as to these two forms no recommendations would be made, except as set forth above, until the Federal Safety Council considered the matter. It was the belief of the Committee that the Council may desire to incorporate into Standard Forms 91A and/or 93 all questions which it is the recommendation of the Committee be deleted from Form 91.

> This Committee recommends that Standard Forms 91A and 93 remain as is unless the Federal Safety Council desires to incorporate therein some of the provisions which the action recommended herein would serve to delete from Standard Form 91. Insofar as the Federal Tort Claims Act is concerned no changes are necessary.

A motion was then carried that the draft of Standard Form 91, as amended by the Committee, be referred to the Bureau of the Budget with the following recommendations:

> (1) That the present Standard Form 91 be completely revised and issued in accordance with the form suggested by the Committee, a copy of which is attached hereto (Exhibit "B");
>
> (2) That the original copy of said form be printed on cardboard as said form is at present furnished, and that it also be printed on paper in order that extra copies for internal administrative purposes may easily be made. The operator is to execute the cardboard copy which, if administrative requirements demand, may be copied on paper later.

There was presented to the Committee a complaint that, as the Government forms now exist, no form seems appropriate for the initial reporting of accidents, other than automobile and aircraft, i.e., falls

in and about Government buildings, etc. It was stated that the present Standard Form 92, which has been used for this purpose, is often subject to the same objections, pointed out hereinabove concerning Form 91. It is subject to production on demand and often times containing material which is the product of investigators and thus hearsay. In addition, it requires that repairs to the premises or other corrective measures be reported, which information might infer an admission that the Government has been negligent in the upkeep of its property. It fails to make provision for much information which could be obtained and which is of value in the defense of tort claims.

It is the conclusion of the Committee that Standard Form 92 as it presently stands is of little or no value in the administration of the Federal Tort Claims Act. Said form may have some advantages and furnish some of the requirements of the Federal Safety Council, although representatives of the Council indicate that it has no value for its purposes.

Insofar as administration of the Federal Tort Claims Act is concerned, however, it is the unanimous opinion of the Committee that the form denoted "X", copy of which is attached to this report, marked "Exhibit "C", is necessary and desirable and should supersede and replace the present Form 92, or if it is felt that a need exists for Standard Form 92 in its present form that Form "X" be given a new number and required to be executed in cases which are pertinent.

The Committee recommends that a form such as attached Exhibit "C" be adopted for distribution to the various agencies of Government with appropriate instructions to satisfy the foregoing necessity.

The Subcommittee on Forms took under consideration Standard Form 94, which is filled out by those witnessing accidents involving government employees. It was pointed out that the form is objectionable in that it asks the witness to give his opinion as to the cause of the accident and the means by which it might have been avoided.

Opinions relating to such matters are uniformly barred at trials, inasmuch as they go to the very question which the court is called upon to decide. Furthermore, it was noted that it would be desirable to make certain changes in phraseology and in the sequence of questions, as well as to adopt the diagram of the accident appearing on the revised Standard Form 91.

The recommendations of the Subcommittee were presented to the full Committee and were accepted in toto. Following an amendment by the full Committee, a motion was made and carried unanimously that the Standard Form 94 be revised in the manner set forth in the attached exhibit (Exhibit "D").

It is, therefore, the recommendation of the Committee that present Standard Form 94 be revised and issued in accordance with the form attached hereto.

In the course of the Subcommittee's discussion of the settlement agreement signed by the claimant, Standard Form 96, it was discovered that a number of the agencies had added additional language to the agreement in order to make it not only more comprehensive and explicit but also to assure that it fully bound the claimant. As a result, the Subcommittee recommended, and the Committee approved, that hereafter the terms of the settlement agreement be left to the discretion of each agency.

It is, therefore, the recommendation of the Committee that each agency administering the Federal Tort Claims Act be authorized to adopt whatever settlement form it believes would best serve the interests of the Government.

The Committee considered what action should be taken upon the question of the adoption of a recommendation to be made to the Bureau of the Budget regarding the employment of local doctors and property appraisers in an agency's investigation of claims.

Many cases have not resulted as favorably to the Government as they might have had such persons been available to defense counsel. Service doctors and others have been transferred after making an examination and before trial and have not been present to refute claims of plaintiffs' and their experts. A deposition is a poor weapon with which to refute testimony of a physician, for example, who is present in Court.

It was indicated that experience has shown that there is often a necessity to go outside Government service to obtain physicians and property damage appraisers. Some judgments rendered against the Government have shown that Courts place little or no reliance upon the testimony of Government people testifying in the Government's defense. Some Courts have unequivocally stated that such witnesses cannot be, and are not, impartial. Whether one agrees with such views is beside the point. Such views do exist, and to combat them this Committee believes that in proper cases and for the proper protection of the Government, physicians and appraisers outside Government service should be retained.

There was general discussion concerning the opinion of the Comptroller General (29 Comp. Gen. 111) which, it was contended, gave agencies authority to hire physicians so as to obtain the medical examination and reports which are contemplated under this heading. It was pointed out that obviously this opinion dealt only with physical examinations and expenses of retaining physicians, that there was a substantial amount of property damage for which the Government was held responsible, in which cases no independent, impartial physical examinations and surveys were had. There was considerable doubt expressed on the part of the representatives of several agencies concerning their authority to use general funds to obtain the type of examination or inspection desired.

It was the conclusion of the Committee that while general funds could be used in those cases where examinations or inspections could not be made by Government employees, there was considerable doubt whether such funds could be expended where there were available Government doctors or property appraisers to make examinations or surveys.

It was the unanimous opinion of the Committee that it would be advisable to have examinations or surveys of the type suggested made at the earliest possible date after the accident, in all instances where there exists a potential liability on the part of the United States to a claimant for injuries or property damage, whether suit has yet been instituted or not.

The Committee recommends and hereby advises the Bureau of the Budget of the need for such authority. It is requested that the Bureau of the Budget seek a formal opinion from the Comptroller General or from the Attorney General, or both if necessary, respecting the expenditure of general funds for these purposes. In the event of a ruling disallowing expenditures for these purposes, it is recommended that the Bureau of the Budget sponsor legislation or, if possible, secure the issuance of an executive order granting agencies the right to use their general funds for expenditures of this type.

The next matter considered was the question of whether a proposal should be made to recommend to the Congress legislation requiring claimants to give notice of time, place, and cause of accident within a specified period. The attention of the Committee was directed to, and consideration was had of, the statutes of several jurisdictions indicating the type of statute recommended by the proponents of this suggestion. (Two of these statutes are attached marked Exhibits "E" and "F".) It was further indicated that the intention was that such legislation would only be sought in cases involving accidents caused on, about, or adjacent to Government premises or sidewalks or ways over which the Government has control.

Consideration was given to the fact that most states and municipalities having such legislation require a notice of time, place and cause of injury as a condition precedent to recovery for injuries caused by defective ways or falls in public buildings, etc. In some jurisdictions similar legislation has been enacted for the protection of private owners of property.

The general purpose behind statutes of this type is to afford those sought to be charged with responsibility for injuries an opportunity to examine the place where the injury allegedly occurred before physical changes occur. In some jurisdictions where snow or ice is in part the

alleged or actual cause of an accident a notice must be given within ten (10) days of the accident or there can be no recovery. It is to enable the landowner an opportunity to see and examine the place, before the snow or ice melts, that such statutes exist.

Since the Statute of Limitations under the Federal Tort Claims Act is now two years, it may readily be seen that a person who alleges a fall in or about Government property may wait over twenty-three months after the date of the alleged accident before indicating that he seeks to hold the Government responsible. At such a date following the occurrence it is highly improbable that a proper investigation can be had. Certainly physical aspects of the property may be substantially changed in two years.

It is the recommendation of the Committee that there is a necessity for such a statute and that the Bureau of the Budget seek enactment of such a statute at the earliest possible time.

It is recommended that a period of approximately ninety days be allowed within which time notice could be given. Such a notice in cases of the kind described would be a condition precedent to recovery except where, because of physical or mental incapacity due to the accident, the claimant was unable to comply with the provisions of such a statute.

It was also suggested that one of the reasons for the Government's failure to know about accidents of the type indicated might be due to the failure on the part of the Government employees to report accidents and to keep premises in proper condition in order that such accidents would not occur.

Since this is a possibility at least, the Committee recommends that a directive be issued to all Government agencies indicating the necessity for all those in a custodial or supervisory capacity to report incidents, which might fall into this category, to their superiors at the earliest possible time.

A proposal was made to recommend legislation requiring mink farms,

turkey farms, and all "farms" where live animals or poultry are raised, particularly those which have a tendency to devour their young or trample upon each other when frightened or startled by any external cause, to post warning signs visible from the air and to compel registration of said farms with proper authorities (such as the Civil Aeronautics Authority, etc.,) as conditions precedent to any possible recovery based on the theory that the fright of the animals, etc., involved was due to low flying aircraft owned and operated by the Government.

It was pointed out that if such legislation were enacted, and if proper marking and notification were made pursuant thereto, those piloting Government aircraft could arrange their flight plan so as to avoid these particular areas and thus reduce the number of claims of this nature. Furthermore, such legislation would also serve to publicize the existence of such farms, so that in the event of unauthorized low flying over these areas the property owner concerned would be in a position to show that the violators had knowledge of his farm and of the sensitiveness of his stock to aircraft operations overhead. In this connection see Nova Mink Limited and Trans-Canada Airlines, Supreme Court of Nova Scotia, January 5, 1951.

The Committee recommends that such legislation be sought.

The administrative personnel who have been compelled to deal with claims brought under the Federal Tort Claims Act have discovered many instances where accidents were caused due to a physical disability of the Government employee. Either deficient eyesight, hearing or other physical disability prevented the employee from being the type of alert driver which, it is the belief of the Committee, should be insisted upon by the Government in order to avoid being charged with responsibility for injuries and damage. Not only is it important from the standpoint of avoiding expense to the Government but it is also a humane requirement that the Government seek to take every step it possibly can to avoid inflicting injury or damage on others in the carrying out of its operations. Furthermore, the National Safety Council recommends and

most private business enterprises require physical examinations of the indicated type. The Government should be in the same position as private enterprise and should follow the recommendations of its Safety Council.

The Committee recommends to the Bureau of the Budget that operators of all Government vehicles be required to undergo a periodical physical examination.

It has been discovered from time to time that maintenance records of Government vehicles and aircraft have been found missing when cases are being prepared for trial. It has been the contention in a few instances that the sole cause of the accident was due to the mechanical defects of Government vehicles or aircraft and not the negligence of any employee of the Government. There has been difficulty in sustaining proof of the allegation of such mechanical failures. Generally all the records which would tend to prove the allegations made by the Government employees have been destroyed at the time the cases are reached for trial.

It seems that very little additional effort is necessary, if a vehicle or aircraft is involved in an accident, to have the maintenance records of the vehicle or aircraft segregated and retained until all possibility of litigation arising out of the accident has been disposed of or the statutory time within which actions can be brought has expired.

It is recommended that maintenance records of all Government vehicles and aircraft involved in any accident be preserved until such time as all litigation arising therefrom has been disposed of or until such time as the Statute of Limitations has expired.

The proposal to indemnify Government employees who have been held personally responsible for torts evoked an extended discussion, and since agreement seemed difficult, a Subcommittee was appointed to consider the entire matter and report to the Committee. The

Subcommittee appointed consisted of: Colonel Russell T. Boyle (Army); O. Knowles Blanchard (G.A.O.); Harold F. Jones and Edwin C. Green (Post Office Elmer Mostow (Agriculture); John H. Kerby (Veterans Administration) and John J. Finn and Robert T. Andrews (Justice).

The Subcommittee considered the views of various agencies and individuals. The following aspects of this problem were discussed:

The individual employee of the Government has always been liable for his own tortious acts. By the enactment of the Federal Tort Claims Act, Congress waived the Government's immunity from suit for the tortious acts of its employees. Although such was not the primary purpose of the Act, it, in effect, provides a measure of protection for the individual employee who may have been negligent incident to his employment by providing that any judgment against the Government bars any subsequent action against the employee. However, the injured party may choose to sue the individual employee rather than the Government and the employee is not indemnified by the Government under the Federal Tort Claims Act as it is now applied. Even before enactment of the Federal Tort Claims Act the practice has been to seek and obtain passage of private bills for the relief of employees against whom judgments have been obtained in this type of case. In principle, some persons feel that the Government should protect all of its employees from suits arising from acts or omissions within the scope of employment which constitute merely simple negligence (as distinguished from gross negligence, wilful or wanton misconduct).

An action against the individual employee usually will be brought in a state court and liability and damages will be determined by a jury rather than (as under the Federal Tort Claims Act) in a Federal court where facts as well as law are determined by the court. Some persons feel that juries might have a tendency to allow more damages than judges, especially if it became generally known that the Government would indemnify the defendant against any judgment which might be rendered against him. Whether juries would award greater damages is open to question.

The employee, knowing that he has nothing to lose, may fail to defend the action adequately and thereby subject the Government to the payment of excessive damages.

The fact that the Government will reimburse an employee, even when the judgment against him was obtained in a state court where no one is charged with the duty of protecting the Government's interests, may encourage collusion between the employee and the claimant. The Government thus may become the victim of fraud.

Since, as the members of the Committee were informed, it is the announced policy of the Department of Justice to defend Government employees for "scope of duty" torts, the proposal to have the United States Attorney conduct the defense of these cases would not necessitate a change of policy in that Department.

There should be statutory certainty that such a suit, on motion of the United States Attorney, is removable to a Federal District Court. Having the suit removed to a Federal District Court probably does not require any legislation (28 U.S.C.A. 1442(a)(1), although there is a split of authority on this point. Underhill v. Tabbutt, 62 F. Supp. 11 (1945), Ampey v. Thornton, 265 F. Supp. 216 (1946), Logemann v. Stock, 81 F. Supp. 337 (1949).

There was extended discussion as to whether employees should be reimbursed for "gross" or "wilful" as distinguished from "simple" negligence. It was pointed out that it would be impractical to distinguish between the degrees of negligence and, therefore, reimbursement should depend solely on the employee's request. The only alternative is either an administrative finding of the degree of negligence (which as was pointed out imposes too great a burden on Departmental Solicitors or General Counsels) or to request the jury, or judge when appropriate, to find the degree of negligence. The latter alternative, however, imposes a conflict on the United States Attorney; it would be to the Government's interest in such cases to find either no negligence or "gross" or "wilful" negligence.

Irrespective of morale factors resulting from administrative determinations to reimburse some employees as opposed to others, on the basis of ordinary negligence, the difficulty of administratively determining the distinctions between gross or wilfull negligence and ordinary negligence in numerous situations would be extreme. There is no uniformity of opinion, nor are there clearly marked guide lines of distinction between the various degrees of negligence, as evidenced by the conflicting decisions of the courts throughout the United States and innumerable writings on this subject by eminent legal authorities. The matter would be further complicated by the difficulty, in many instances, of ascertaining facts to establish wilful negligence where dependent upon the testimony of fellow employees to the individual claiming relief.

Possibly the effect of such relief legislation would result in a relaxation of care upon the part of some employees in the exercise of their duties, particularly in the field of motor vehicle operation. Further, it would tend to promote the discontinuance of liability insurance presently carried by many, thus encouraging future plaintiffs to seek relief in claims against the United States instead of against the individual.

Some of the agencies of Government have found that their employees were deliberately failing driving tests because judgments have been rendered against individual employees. A fear is expressed that while the problem is not serious at this time it may become serious in the future.

Another problem arises where an employee of Government is sued in a state court and fails either willfully or through neglect to advise superiors in order that the case may be removed to a Federal court or counsel may be furnished him. It is believed that in a case of this kind any reimbursement of the employee would be inequitable because prejudice would probably have been incurred by the Government due to the employee's inaction.

As the situation is now, the Government is liable for employees' torts without regard for their grossness or willfulness. By making no

distinction between the degrees of negligence the Government would be in no worse situation than it is today. On the contrary, it would serve to equalize the treatment of the employees who are sued personally and those employees who cause the Government to be sued.

Passage of legislation to provide such reimbursement would encourage claimants to bring suits in friendly state courts rather than to bring action against the United States in the Federal District Court as provided by the terms of the Federal Tort Claims Act. In effect, such legislation would enable persons desirous of so doing to by-pass the Tort Claims Act completely, with the result that the Government would lose control of litigation which quite definitely could, and certainly might, result adversely to Government interests. Furthermore, if such legislation were adopted, the United States might conceivably be called upon to pay judgments rendered against its employees for torts for which there is presently no right of recovery for judgment against the Government; for example, cases arising where the statute of limitations is effective in so far as the Government is concerned and the many exceptions which are written into the Federal Tort Claims Act.

The Subcommittee concluded that so very few actions have been brought against Federal employees since the enactment of the Tort Claims Act that it would be unwise, perhaps, to seek legislation in this connection because in all probability great difficulty would be encountered in establishing the necessity therefor. The private bills for the relief of Government employees, at least at present, are so relatively few in number that it was concluded that it would be unwise to disturb the status quo by attempting to secure legislation to correct what is, proportionately at least, a negligible number of cases.

It is further suggested that in all cases wherein employees of the Government are involved in accidents and are insured adoption of the proposal suggested would amount, in effect, to indemnification by the Government of an insurance company which had accepted a premium to assume the risk of the happening of the accident, and that such indemnification in some cases might result in unjust enrichment of insurance companies.

In this connection, it was pointed out that insurance companies would be able to present claims for reimbursement more skilfully and efficiently than would an individual employee of Government who was not insured. The possibility of claims of discrimination against administrative personnel called upon to make decisions in this connection might be intensified if a claim made by an employee was rejected when a claim made by an insurer was paid.

The Subcommittee reported that in its view no legislation in this connection should be sought now.

The Committee, after considering the foregoing matters adopted the report and conclusions of its Subcommittee.

> It is, therefore, the recommendation of the Committee that no legislation be sought, in the near future looking to enactment of a statute which would provide for reimbursement of a Government employee held personally responsible for a tort committed while in the scope of his Government employment.

It is the recommendation of the Committee, however, that if legislation should be considered to reimburse employees who have been found responsible for an accident such a statute should be surrounded by certain safeguards. The following limitations should be insisted upon:

> 1. There should be reimbursement only in cases where judgment has been rendered, or where the United States Attorney who elects to assume the defense, has approved the settlement.
>
> 2. As a condition precedent to reimbursement, the employee should notify the local United States Attorney of the suit in order that the latter may, if he deems it desirable, take charge of or advise in the conduct of the defense.
>
> 3. The suit should, on motion of the United States Attorney, be removable to a Federal District Court.

4. The employee must report promptly the accident or incident to his superiors in accordance with such regulations as may be prescribed.

5. The employee must forward promptly to his superiors any demand, notice, summons or other process received by him or his representative.

6. The employee must permit the Government to assume full responsibility for the defense of any action which may be brought against him including full authority to compromise a claim whether suit is pending or not.

7. The employee must cooperate with the Government in the defense of the action.

8. The employee shall not be entitled to reimbursement for any portion of a judgment for which he is entitled to indemnity by reason of an insurance contract.

9. The Government shall reimburse the employee only for that portion of a judgment which the employee has, in fact, paid.

10. The head of the administrative agency should be authorized to refuse to indemnify the employee against all or any portion of any judgment which in his sound discretion he considers excessive on the basis of the record, or which, in his opinion, is the result of fraud, collusion, or lack of cooperation on the part of the employee.

11. That the legislation be permissive and a matter of grace rather than a matter of right.

The Subcommittee also considered the following proposal:

The question of the policy to be followed in cases where an employee, upon whose tortious acts the Government's liability is predicated, is covered by private insurance.

It was pointed out at the outset that this proposal was not directed at or against insurance companies, but that the policy question involved was equally applicable to the employee not insuredbut financially responsible. It was pointed out that if the Government proceeded against only those employees who were insured to collect indemnification that ultimately, at least, future indemnification policies would simply exclude "scope of duty" for those employed by the U. S. Government.

However, existence of liability insurance is immaterial on the question of liability of the employee to the employer for damages suffered by the latter as a consequence of the act or omission of the former. There appears to be no implied, and certainly no specific, authority in a Government official or agent to forgive a liability to the Government. It follows that it would be legally improper, in the opinion of the majority of the Subcommittee, to forgive a liability to the Government solely because the debtor does not have in effect a contract with a third party under which he will or may be indemnified. Aside from the foregoing, probably all liability insurance contracts provide for a direct cause of action by the insured's creditor. Some do so provide under certain stated circumstances. Manifestly, if a party liable has no assets above his exemptions and little prospect of acquiring such, there would be no point in suing him. If he has applicable liability insurance and a judgment creditor can reach same, the existence of such insurance would be a factor to consider in determining whether to sue.

While a majority of the Committee felt that there was no right of forgiveness, it was pointed out that the Attorney General in 40 Op. A.G. 38 had ruled that the Government agency paying a claim under the Act of December 28, 1922, 42 Stat. 1066 (31 U.S.C. 215-217) could not make a deduction from the salary of the employee whose tortious act gave rise to the claim. It was concluded, however, that this 1941 opinion should not be considered controlling in Federal Tort Claim Act matters. It was also recognized that the opinion was confined to the question of reimbursement by administrative action, and did not purport to rule on the right of the Government to bring an action in court against the employee.

The Committee's attention was directed to the fact that present-day governmental operations are of so vast a scope, so complicated in their execution, and, in certain instances, so novel in their nature that it is conceivable that a misstep in the execution of such activities could result in astronomical damage and injury, i.e., the building

of a dam, the manufacture of fertilizer from materials used in making explosives, etc. It is argued, therefore, that it would be unfair to hold an employee accountable in such instances, as the attendant risks may be far greater than those encountered by employees in private enterprise. It was noted, however, that as a practical result where liability runs into huge figures, no reimbursement is possible anyway, because of the non-collectibility of the sum. Moreover, in cases where liability is exceedingly heavy, it often developes that the damages are incurred, not as a result of the negligence of a single employee but because of a series of negligent acts on the part of numerous and sometimes unknown employees. To secure reimbursement in these instances and in an amount proportionate to the degree to which an individual employee's negligence contributed to the total harm, would be exceedingly difficult to ascertain.

Certain of the Committee also expressed the view that a morale problem conceivably could arise if the Government undertook to require reimbursement from erring employees. It is apparently the view of many employees, that while on Government business they should not be called upon to answer personally for their governmental acts. This position while contrary to the general rules governing master-servant relationships with third parties, nevertheless does persist.

In opposition to this argument, it was emphasized that to withdraw the right to seek reimbursement would destroy any vestige of control over the employee and that such action would result in a breakdown of discipline. In effect, the arguments used against reimbursing Government employees on the ground that it would produce not only legal but moral irresponsibility, were said by some to apply here as well.

There is also to be considered in this connection the fact that in so far as the armed services are concerned certain of the personnel are uniformed. The services generally feel that in connection with employees who fall into this category present administrative action available to commanding officers is sufficient for the purposes of the Government at this time and that no necessity is apparent for the enactment of legislation which would enable the Government to seek reimbursement from uni-

formed personnel. It is, therefore, their view that in cases where ordinary negligence is involved there would be no desire to obtain reimbursement. In the case where wilful negligence, gross negligence or wanton and wilful misconduct is involved the services have available court martial procedures which adequately insure efficient conduct of the services' business and would counteract the objections which indicate a possibility that passage of such legislation would promote laxity on the part of Government employees.

> The Committee, after taking into full account all of the foregoing considerations, recommends no action at this time on the proposal to seek reimbursement from employees whose tortious acts were the basis of a judgment against the United States.

The following proposals, were presented for consideration of the Committee:

> "The head of each department, independent agency or establishment of the United States, (or the designee of such official), is authorized to consider, ascertain, adjust, deny, or allow, or compromise any claim presented which is predicated on alleged legal liability of the United States and which arises out of the activities of his department, agency or establishment; provided the amount to be paid by the United States pursuant to the action taken shall not exceed one thousand dollars and appropriate release of the United States shall be obtained."

> "When liability to the United States exists or is asserted in respect to any matter other than breach of contract and no legal action is then pending thereon, the head of the department, independent agency, or establishment in connection with the activities of which the claim on behalf of the United States arises, (or the designee of such official), is authorized to ascertain, adjust, collect, or compromise such claim of the United States if the damages suffered or to be suffered by the United States shall not exceed one thousand dollars; and to execute and deliver appropriate release upon payment of such amount as shall be so agreed upon in such case; which release shall bind the

United States and all officers and agencies thereof. Nothing in this Act shall be construed to modify or repeal any existing statute authorizing settlements, adjustments or compromises."

It was the opinion of the majority of the Committee that the proposal to give express compromise authority to agencies handling administrative claims was unnecessary, inasmuch as 28 U.S.C. 2672 by its terms "consider, ascertain, adjust, deny or allow" implied that the agencies could compromise claims of questionable liability. A motion was therefore made and passed that the aforesaid proposal be tabled by the Committee, but that the Committee would have no objection to interested parties asking for a formal ruling on the matter from the Comptroller General or the Attorney General.

The second proposal, that pertaining to the authority of the head of the agency to compromise claims on behalf of the United States, was felt by the Committee to have considerable merit. It was pointed out that there now is no provision for settlement of such a claim by the head of an agency except the Department of Justice. It is now necessary to refer all such cases to the Attorney General for settlement if any amount except the full amount of the Government's damage is to be paid. It was also pointed out that even where the full amount of damage is to be paid there seems to be, at present, no clear cut authority in any agency head or other person to furnish the payor with a release to extinguish the claim. It was felt, however, that the application of any such provision should be limited to tort claims, and that a monetary limit of $1,000 should be imposed. A motion was therefore made and carried that the Bureau of the Budget be advised of the need for this compromise authority and that legislation bestowing such authority be enacted in a form similar to that contained in the above draft.

The Committee accordingly recommends that the Bureau of the Budget seek the enactment of legislation granting administrative authority to compromise tort claims where the United States is the claimant in all cases where the amount involved does not exceed $1,000.

NEW YORK HIGHWAY LAW, #215.

§ 215. Liability of towns and town superintendents of highways in certain actions.

1. No civil action shall be maintained against any town or town superintendent of highways for damages or injuries to person or property sustained by reason of any highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge or culvert was actually given to the town clerk or town superintendent of highways, and that there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of, or, in the absence of such notice, unless such defective, unsafe, dangerous or obstructed condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence; but no such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge or culvert, unless written notice thereof, specifying the particular place, was actually given to the town clerk or town superintendent of highways and there was a failure or neglect to cause such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

2. No civil action shall be maintained against any town or town superintendent of highways for damages or injuries to person or property sustained by reason of any defect in its sidewalks or in consequence of the existence of snow or ice upon any of its sidewalks, unless such sidewalks have been constructed or are maintained by the town or the superintendent of highways of the town pursuant to statute, nor shall any action be maintained for damages or injuries to person or property sustained by reason of such defect or in consequence of such existence of snow or ice unless written notice thereof, specifying the particular place, was actually given to the town clerk or to the town superintendent of highways, and there was a failure or neglect to cause such defect to be remedied, such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

3. No action shall be maintained against any town or town superintendent of highways to recover any such damages, unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law. No action shall be commenced upon such claim until the expiration of fifteen days after the service of such notice and no action may be commenced subsequent to one year after the alleged cause of action accrued.

EXHIBIT F

GENERAL LAWS OF MASSACHUSETTS (Ter. ed.) CHAPTER 84.

§ 15. Injury to Person or Property.---If a person sustains bodily injury or damage in his property by reason of a defect or a want of repair or a want of a sufficient railing in or upon a way, and such injury or damage might have been prevented, or such defect or want of repair or want of railing might have been remedied by reasonable care and diligence on the part of the county, city, town or person by law obliged to repair the same, he may, if such county, city, town or person had or, by the exercise of proper care and diligence, might have had reasonable notice of the defect or want of repair or want of a sufficient railing, recover damages therefor from such county, city, town or person; but he shall not recover from a county, city or town more than one fifth of one per cent of its state valuation last preceding the commencement of the action nor more than four thousand dollars; nor shall a county, city or town be liable for an injury or damage sustained upon a way laid out and established in the manner prescribed by statute until after an entry has been made for the purpose of constructing the way, or during the construction and repairing thereof, provided that the way shall have been closed, or other sufficient means taken to caution the public against entering thereon. No action shall be maintained under this section by a person the combined weight of whose carriage or vehicle and load exceeds six tons.

§ 18. Notice of Injury; Limitation of Action.---A person so injured shall, within ten days thereafter, if such defect or want of repair is caused by or consists in part of snow or ice, or both, and in all other cases, within thirty days thereafter, give to the county, city, town or person by law obliged to keep said way in repair, notice of the name and place of residence of the person injured, and the time, place and cause of said injury or damage; and if the said county, city, town or person does not pay the amount thereof, he may recover the same in an action of tort if brought within two years after the date of such injury or damage. Such notice shall not be invalid or insufficient solely by reason of any inaccuracy in stating the name or place of residence of the person injured, or the time, place or cause of the injury, if it is shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby. The words "place of residence of the person injured", as used in this and the two following sections, shall include the street and number, if any, of his residence as well as the name of the city or town thereof.

§ 19. Service of Notice.---Such notice shall be in writing, signed by the person injured or by some one in his behalf, and may be given, in the case of a county, to one of the county commissioners or the county treasurer; in the case of a city, to the mayor, the city clerk or treasurer; in the case of a town, to one of the selectmen or to the town clerk or treasurer. If the person injured dies within the time required for giving the notice, his executor or administrator may give such notice within thirty days after his appointment. If by reason of physical or mental incapacity it is impossible for the person injured to give the notice within the time required, he may give it within ten days after such incapacity has been removed, and if he dies within said ten days his executor or administrator may give the notice within thirty days after his appointment. Any form of written communication signed by the person so injured, or by some person in his behalf, or by his executor or administrator, or by some person in behalf of such executor or administrator, which contains the information that the person was so injured, giving the name and place of residence of the person injured and the time, place and cause of the injury or damage, shall be considered a sufficient notice.

§ 20. Correction of Defective Notices.---A defendant shall not avail himself in defence of any omission to state in such notice the name or place of residence of the person injured, or the time, place or cause of the injury or damage, unless, within five days after receipt of a notice, given within the time required by law and by an authorized person referring to the injuries sustained and claiming damages therefor, the person receiving such notice, or some person in his behalf, notifies in writing the person injured, his executor or administrator, or the person giving or serving such notice in his behalf, that his notice is insufficient because it fails to state the name or place of residence of the person injured, or the time, place or cause of the injury or damage, as the case may be, and requests forthwith a written notice in compliance with law; provided, that if the notice does not contain either the place of residence of the person injured or the place of residence or business address of the person giving or serving the notice on behalf of the person so injured, such notice of insufficiency shall not be required, and the defendant may avail himself in defence of any omission or defect in the notice. If the person authorized to give such notice, within five days after the receipt of such request, gives a written notice complying with the law as to the name and place of residence of the person injured, and the time, place and cause of the injury or damage, such notice shall have the effect of the original notice, and shall be considered a part thereof.

§ 21. Notice to Owner of Private Property.---The three preceding sections, so far as they relate to notices of injuries resulting from snow or ice shall apply to actions against persons founded upon the defective condition of their premises, or of adjoining ways, when caused by or consisting in part of snow or ice; provided, that notice within thirty days after the injury shall be sufficient, and that if by reason of physical or mental incapacity it is impossible for the injured person to give the notice within thirty days after the injury, he may give it within thirty days after such incapacity has been removed, and in case of his death without having been for thirty days at any time after his injury of sufficient capacity to give the notice, his executor or administrator may give the notice within thirty days after his appointment. Such notice may be given by posting it in a conspicuous place on said premises and by leaving it with any person occupying the whole or any part of said premises, if there be such a person, and no such notice shall be invalid by reason of any inaccuracy or misstatement in respect to the owner's name if it appears that such error was made in good faith and did not prevent or unreasonably delay the owner from receiving actual notice of the injury and of the contention that it occurred from the defective condition of his premises or of a way adjoining the same.